

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Proposal to Revise Multichannel Multipoint |) | RM-10586 |
| Distribution Service and the Instructional |) | |
| Fixed Service Rules |) | |
| |) | |

REPLY COMMENTS OF INTEL CORPORATION

I. Summary

Intel Corporation is pleased to comment in this proceeding concerning the proposal of the Wireless Communications Association International, Inc. (WCA), the National ITFS Association (NIA) and the Catholic Television Network (CTN) to revise the Multichannel Multipoint Distribution Service (MMDS) and the Instructional Fixed Service (ITFS) rules. The current regulatory regime for MMDS and ITFS is impeding the adoption of efficient new technology and uses such as broadband access. The Federal Communications Commission (FCC) should expeditiously begin a rulemaking to implement the proposed reforms submitted by WCA, NIA and CTN. This rulemaking should also consider various spectrum reforms recently proposed by the FCC staff that

would likely strengthen the proposal of WCA, NIA and CTN and better ensure the efficient use of this spectrum and promote the deployment of innovative new technology.

II. The WCA, NIA and CTN Proposal

a. *Current problems*

Although new broadband technology has been deployed in several markets and is being considered in still more, WCA, NIA and CTN believe that the current licensing regime will preclude MMDS and ITFS licensees from taking advantage of next generation technology.¹ They maintain that there are several problems including:

- Adoption of new broadband technology would require numerous applications that would create substantial administrative burdens and delays.
- Professional installation and notice requirements and other restrictions impede the retail distribution of MMDS/ITFS services.
- Overly preclusive interference protection rules effectively prevent operators from offering ubiquitous coverage for non-stationary devices such as laptops.
- The current interleaved band plan precludes broadband service unless the adjacent interleaved channel licensee agrees.²

b. *The Proposal*

After consulting with MMDS and ITFS licensees, system operators, equipment vendors and engineering experts, the WCA, NIA and CTN developed a detailed proposal for reform (Proposal). WCA, NIA and CTN believe that the Proposal would make beneficial changes including:

- Modify rules to facilitate deployment of next generation, low power systems that can serve non-stationary devices.
- Establish a new band plan for isolating high power, one-way systems.
- Establish a mechanism for transitioning from the old to the new band plan.

¹ WCA, NIA & CTN, *A Proposal For Revising the MDS and ITFS Regulatory Regime*, October 7, 2002, p. 7.

² *Id.* at 7-10.

- Remove regulatory underbrush.³

III. The Spectrum Task Force Report and Related Staff Analysis

a. Spectrum Task Force Report

Recent FCC staff analysis considers in generic fashion the same problems addressed by the Proposal. The Spectrum Task Force Report (Report) states that: “To increase opportunities for technologically innovative and economically efficient spectrum use, spectrum policy must evolve towards more flexible and market-oriented regulatory models.”⁴ It also concludes that such models will require well-defined rights and responsibilities for licensed and unlicensed spectrum users, particularly with regard to interference.⁵

Of special relevance to the case at hand, the Report recommends that the FCC identify: “bands that are suitable for initiating transition within the next five years and develop a transition plan for each band” [...and...] “band ‘defragmentation’ opportunities (consolidating narrowband spectrum ‘slices’ and encouraging migration of compatible technologies into common band groupings).”⁶

b. OPP Working Paper #38

At the same time the FCC released Office of Plans and Policy Working Paper #38 (Working Paper) by Evan Kwerel and John Williams entitled *A Proposal for a Rapid*

³ *Id.* at 11.

⁴ Spectrum Policy Task Force Report, ET Docket No. 02-135, November 2002, p. 3.

⁵ *Id.*

⁶ *Id.* at 66.

*Transition to Market Allocation of Spectrum.*⁷ This Working Paper addressed several transitional issues that arise when incumbent licensees are given operational and technical flexibility. The Working Paper states that granting incumbent licensees flexibility is not sufficient to ensure the transition to an efficient market allocation.⁸ The Working Paper delineates in considerable detail the prerequisites for the efficient operation of markets and a successful market-based transition plan. A well-designed plan, among other things, should: be voluntary, but create incentives for incumbents to participate; exhaustively assign spectrum rights; define spectrum rights in terms of “outputs” such as power limits at the boundaries between spectrum blocks and geographic areas; and create a simultaneous exchange for substitutable spectrum to reduce coordination problems among licensees and to facilitate efficient deal making.⁹ The Working Paper specifically considers the MMDS/ITFS spectrum as a possible candidate for a transition to a market allocation of spectrum.¹⁰

IV. Recommendations

a. General Conclusions and Recommendations

Intel strongly supports the major conclusions and recommendations of the Spectrum Task Force Report. While more detailed comments will be provided in subsequent proceedings, Intel believes that spectrum reforms are needed to promote innovation, more efficient use of existing spectrum and ensure that Internet users can get maximum value from wireless applications and connectivity. The FCC’s current

⁷ Evan Kwerel & John Williams, *A Proposal for a Rapid Transition to Market Allocation of Spectrum*, OPP Working Paper #38, November 2002.

⁸ *Id.* at iv and v.

⁹ *Id.* at 3-23.

spectrum management system is cumbersome, litigation-prone and politicized. Its tendency to “lock in” inefficient uses and technologies has become more costly with the heightened pace of technical change and the burgeoning demand for diverse wireless uses.

Two promising spectrum management techniques—the creation of largely unregulated, unlicensed bands and the grant of increasing use and technical flexibility to exclusive licensees—can serve as guides for additional reform. Both techniques give users more freedom to innovate and respond to changing market forces without seeking government approval. But both reforms require that the FCC specify interference and other rights and obligations objectively and in a manner designed to foster industry planning and private cooperation.

Intel believes that the FCC should begin spectrum reform proceedings that will consider increased reliance on unlicensed spectrum use and flexibility for exclusive licensees. First, spectrum easements or “underlays” for new technologies such as agile radios should be created where they will not impose significant interference on existing licensees. Second, existing licensees on particular bands should be given use and technical flexibility in a manner designed to foster efficient reallocation.

b. Specific Conclusions and Recommendations

The current regulatory regime for MMDS and ITFS is impeding the adoption of efficient new technology and uses and the FCC should expeditiously begin a rulemaking to implement the proposed reforms submitted by WCA, NIA and CTN. However, this rulemaking should consider various spectrum reforms recently proposed by the FCC staff

¹⁰ *Id.* at 34.

that would likely strengthen the proposed reforms and better ensure an efficient market allocation of this spectrum. For example, the FCC should consider eliminating all eligibility and use restrictions including how much of the spectrum is used for “high” power and “low” power uses. It should also consider whether spectrum rights are adequately defined in terms of “outputs” such as power limits at the boundaries between spectrum blocks and geographic areas. Lastly, the FCC should consider creating an effective simultaneous exchange for all of the substitutable spectrum to reduce coordination problems and facilitate efficient deal making. Such a mechanism might be particularly important in the MMDS and ITFS services where the coordination requirements among various licensees and leaseholders could be massive.

V. Conclusion

Reform of the MMDS and ITFS regulatory regime could enhance consumer welfare by promoting new technology, creating valuable new services and fostering broadband competition. Accordingly, the FCC should expeditiously begin a rulemaking to implement the proposed reforms submitted by WCA, NIA and CTN. To better ensure the

efficient use of this spectrum, this rulemaking should consider various spectrum reforms recently proposed by the FCC staff in the Spectrum Task Force Report that would likely strengthen the proposed reforms.

Respectfully submitted,

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